

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IAN NOEL,

Plaintiff,

v.

6:06-CV-788

NEW YORK STATE OFFICE OF MENTAL
HEALTH CENTRAL NEW YORK
PSYCHIATRIC CENTER,

Defendant.

APPEARANCES:

OF COUNSEL:

A.J. BOSMAN, ESQ.
Attorney for Plaintiff
6599 Martin Street
Rome, New York 13440

HON. ANDREW CUOMO
Attorney General of the State of New York
Attorneys for Defendant
The Capitol
Albany, New York 12224

KELLY L. MUNKWITZ, ESQ.
CHRISTINA L. ROBERTS-RYBA, ESQ.

DAVID N. HURD
United States District Judge

ORDER

Plaintiff Ian Noel ("plaintiff") has moved for an order calculating interest on the judgment from May 8, 2008, attorney fees and expenses, and prejudgment interest. (Doc. No. 75)

Defendant does not oppose the amount of attorney fees (\$22,915.75) and costs (\$869.39) for a total of \$23,785.14 requested by the plaintiff. Defendant does oppose any award of attorney fees and costs on the grounds that plaintiff was not the prevailing party on

the appeal. Defendant also opposes any calculation of interest on the judgment or prejudgment interest. (Docket Nos. 77 & 78) Plaintiff replied. (Docket No. 79).

Pursuant to the decision and mandate of the Second Circuit (Docket No. 76), the May 8, 2008, judgment will be reduced by \$120,000.00 from \$421,211.10 to \$301,211.10. The plaintiff is entitled to interest pursuant to 28 U.S.C. § 1961 on the \$301,211.10 from May 8, 2008, to the date of payment. A separate order is not required.

Plaintiff's request for prejudgment interest is untimely and will be denied.

Defendant appealed the entire judgment. Plaintiff was the prevailing party on 71.5% of the judgment. ($\$301,211.10 / \$421,211.10$) Therefore, plaintiff will be awarded 71.5% of the unopposed requested attorney fees and expenses ($\$23,785.14 \times 71.5\% = \$17,006.38$).

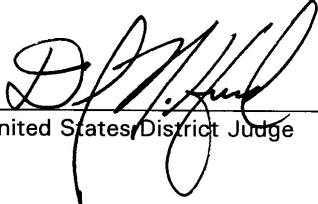
Therefore, it is

ORDERED, that

1. The judgment of May 8, 2008, is reduced by \$120,000 to \$301,211.10.
2. Plaintiff's request for prejudgment interest is DENIED;
3. Plaintiff is awarded attorney fees and expenses in the sum of \$17,006.38; and
4. The Clerk is directed to enter an amended judgment in the sum of \$318,217.48 with interest on \$301,211.10 from May 8, 2008.

IT IS SO ORDERED.

Dated: March 1, 2010
Utica, New York.


United States District Judge